

## Attachment A: B-2500 Consultation History

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A Biological Assessment (BA) (Federal Highway Administration [FHWA] and North Carolina Department of Transportation [NCDOT], 2008) for the Bonner Bridge Replacement Project (B-2500) was prepared in 2008 for the Parallel Bridge Corridor with Phased Approach/Rodanthe Bridge Alternative as described in the *Supplement to the 2005 Supplemental Draft Environmental Impact Statement and Draft Section 4(f) Evaluation* (SSDEIS) (FHWA and NCDOT, 2007). FHWA submitted the BA to the US Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) on March 5, 2008 for use in formal consultation in accordance with Section 7 of the Endangered Species Act (ESA) of 1973. Following is a summary of the Section 7 recent consultation history, as well as a history of project documentation, since the submittal of the BA in March 2008:

- USFWS issued a Biological and Conference Opinion on July 10, 2008 for all phases of the project. (The conference opinion addressed proposed designated critical habitat for the wintering piping plover.)
- NMFS concurred with the effects determinations contained in the BA for species under their jurisdiction on August 4, 2008.
- FHWA issued a *Final Environmental Impact Statement and Section 4(f) Evaluation* (FEIS) (FHWA and NCDOT, 2008) for the Bonner Bridge Replacement Project (B-2500) on September 17, 2008. The FEIS identified the Parallel Bridge Corridor with Phased Approach/Rodanthe Bridge Alternative as the Preferred Alternative. This Preferred Alternative was the alternative identified by FHWA for Section 7 consultation in the March 2008 BA.
- In November 2008, coordination began with USFWS regarding the designation of critical habitat for the piping plover, and USFWS confirmed the conference opinion issued in July 2008 as the Biological Opinion (BO) for the critical habitat. This coordination is described further in Section 3.6 of the 2010 Environmental Assessment (EA).
- After issuance of the FEIS, a number of substantial comments from agencies and the public questioned the selection of the Preferred Alternative. In March 2009, NCDOT and FHWA began coordination with USFWS about possibly re-initiating consultation because of the possibility of reconsideration of the Preferred Alternative. The result of this coordination was a determination that re-initiation of consultation was not necessary, and that USFWS' 2008 BO and the NMFS concurrence were still valid for the project. This coordination is described further in Section 3.6 of the 2010 EA.
- In August 2009, FHWA and NCDOT coordinated with USFWS about possibly re-initiating consultation as a result of a decision by the Merger Team to recommend a new Preferred Alternative for the Bonner Bridge Replacement Project (B-2500) – the Parallel Bridge Corridor with NC 12 Transportation Management Plan Alternative. This alternative states that the construction of Phase I (a new Oregon Inlet bridge) will proceed as soon as possible, followed by later phases for NC 12 south of Oregon Inlet, whose details would be

determined, reevaluated, and documented through agency collaboration as project area conditions warrant. The range of potential future phased improvements and their impacts are reflected in the Parallel Bridge Corridor alternatives assessed in the 2008 FEIS and the 2010 EA. The result of this coordination was a determination that re-initiation of consultation was not necessary, and that USFWS' 2008 BO and the NMFS concurrence were still valid for the project.

- FHWA released an *Environmental Assessment* (EA) (FHWA and NCDOT, 2010) for the Bonner Bridge Replacement Project (B-2500) on May 7, 2010 identifying the Parallel Bridge Corridor with NC 12 Transportation Management Plan (PBC/TMP) Alternative as the Preferred Alternative.
- FHWA issued a *Record of Decision* (ROD) for the Bonner Bridge Replacement Project (B-2500) on December 20, 2010. The Preferred Alternative addressed in the 2010 EA- the Parallel Bridge Corridor with NC 12 Transportation Management Plan (PBC/TMP) Alternative- was identified as the Selected Alternative for the Bonner Bridge Replacement Project in the 2010 ROD.
- In January 2013, FHWA and NCDOT provided an update to USFWS on changes in impacts to threatened and endangered species resulting from the proposed Phase I final design. Based on proposed refinements to the Phase I project alignment, design, and construction methodology since the 2008 BO was issued, FHWA also requested re-initiation of formal consultation under Section 7 of the ESA with respect to reassessing the effects of the Bonner Bridge Replacement Project (B-2500) to federally-listed species. Specifically, FHWA requested a modification to one of the Terms and Conditions related to sea turtles of the 2008 BO so that amber-colored LED lighting could be used during construction in place of the lighting indicated in the 2008 BO (see the second paragraph of Project Commitment 26.c in the Project Commitments in Appendix A of the 2010 ROD). In a January 22, 2013 letter to FHWA, USFWS agreed to this change in the Terms and Conditions of the 2008 BO. USFWS' agreement was based in part on a field meeting and lighting demonstration that took place on July 2, 2012. As a result, the second paragraph of Project Commitment 26.c as presented in the 2010 ROD was updated as follows: "During turtle nesting season, portable construction lighting must be amber-colored LED lights with a predominant wavelength of approximately 650 nanometers." This statement was refined further as described below. In addition, USFWS agreed with FHWA's conclusion that the changes in the alignment, design, and construction methods of Phase I do not alter the previous effects determinations for listed species and critical habitat. USFWS also indicated that the amount or extent of incidental take anticipated, as addressed in the 2008 BO, will not be changed for the worse. With some of the design changes (e.g., no longer using property from the [former] Oregon Inlet US Coast Guard Station as a staging area), the amount of incidental take may possibly be decreased. With the exception of the agreed upon lighting change, USFWS indicated that it believes that all Reasonable and Prudent Measures and Terms and Conditions of the 2008 BO are still appropriate and adequate.
- A Threatened and Endangered Species Technical Memorandum for Phase IIa was issued by NCDOT in February 2013. A version revised to reflect final decisions on pile jetting intake pipe placement was issued in May 2013 ("Threatened and Endangered Species Technical

Memorandum for Pea Island Long-Term Improvements Bonner Bridge Replacement Project Phase IIa;" FHWA and NCDOT, 2013).

- FHWA reinitiated consultation with the USFWS in May 2013. Based on requests made in an April 12, 2013 memorandum from NCDOT to FHWA, FHWA requested modifications to two of the original Terms and Conditions that were included in the 2008 BO. In a letter dated May 17, 2013, USFWS granted the two requested modifications to the Terms and Conditions of the 2008 BO and concluded formal consultation on the action outlined in FHWA's May 2013 request for re-initiation. The two changes in the Terms and Conditions were:
  - "During turtle nesting season, portable construction lighting must be amber-colored LED lights with a predominant wavelength of approximately 650 nanometers (preferred) or low pressure sodium-vapor type (with USFWS approval)." This change allows for contractors to use either type of light.
  - "During the construction of Phases II, III and IV of the Phased Approach/Rodanthe Bridge Alternative (if it is implemented under the NC 12 Transportation Management Plan [Selected Alternative]), keep all construction equipment and activity within the existing right-of-way unless granted approval by the US Fish and Wildlife Service through a revised protected species Biological Opinion." Approval was granted by the USFWS for construction outside the existing right-of-way with Phase IIa and within an approximate 4-acre construction easement.
- FHWA consulted with the NMFS in 2013, resulting in a letter dated September 30, 2013 with new conservation measures and conclusions. The consultation was necessary due to a new listed species within the project area, the Atlantic Sturgeon, which was listed on April 6, 2012. This consultation yielded a new concern related to the effect of existing fishing at Oregon Inlet on protected sea turtles. NMFS indicated that there is evidence that at least four sea turtles have been hooked during recreational fishing in Oregon Inlet since 1989, and one hooking occurred from the existing bridge catwalks in 2012. As such, NCDOT agreed to install "no fishing" signs to not allow fishing on the catwalks during Oregon Inlet replacement bridge construction to satisfy NMFS concerns and for safety reasons. NCDOT also agreed to install "no fishing" signs on the portion of Bonner Bridge that will be left in place as a pier. If and when a decision is made to allow fishing on the pier, FHWA will reinitiate Section 7 consultation with NMFS prior to the "no fishing" signs being removed.
- In a letter dated August 14, 2014, USFWS granted a requested modification to the Term and Condition regarding portable construction lighting. The Term and Condition now reads: "During turtle nesting season, portable construction lighting must be white or amber colored LED lights with a predominant wavelength of ~650nm (preferred) OR low-pressure sodium-vapor type (with USFWS approval)."
- FHWA requested the re-initiation of formal consultation with the USFWS in January 2015 regarding the rufa red knot (*Calidris canutus rufa*), which was listed as a federally threatened species in 2014. USFWS issued an addendum to the 2008 Biological Opinion on February 9, 2015, based on FHWA's request and a December 2014 NCDOT Technical Memorandum

that summarized the effects of the projects to the species. The 2015 addendum identified two Terms and Conditions in order to minimize impacts to the rufa red knot. These measures include, but are limited to:

- 1) To the extent possible, avoid disturbing foraging and roosting red knots.
- 2) Avoid or minimize opportunities for avian predator perches.

These terms and conditions are consistent with those in the 2008 BO already required for potential impacts to the piping plover.

- A Threatened and Endangered Species Technical Memorandum for Phase IIb was issued by NCDOT in October 2016. In response to this memorandum in a letter dated October 26, 2016, USFWS found that the biological conclusions, the Terms and Conditions, and the previously authorized incidental take of federally listed species remained unchanged. In a letter dated December 13, 2016, the NMFS similarly determined that the proposed action was not likely to adversely affect listed species under that agency's purview.
- FHWA issued a Record of Decision on December 15, 2016 for the NC 12 – Rodanthe Breach Long-Term Improvements (B-2500 Phase IIb), which listed the 2014B Bridge on New Location Alternative as the Selected Alternative.

Since the Bonner Bridge Replacement Project (B-2500) is multi-phased and staggered over years, USFWS addressed its 2008 BO in a form of programmatic consultation known as an appended consultation. As part of this consultation, and as additional design information is developed for subsequent phases of the project, new and subsequent design information must be provided to USFWS so that it may be analyzed to ensure that the take associated with each future phase does not exceed the maximum amount of take authorized in the issued BO. If USFWS determines that future impacts of this project are not significantly higher or different in nature from those reviewed and addressed in the 2008 BO, then information associated with each future phase can be appended to the existing 2008 BO, as has been done for Phase I, IIa, and IIb.